

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOSE SANCHEZ	:	NO. 15-281

MEMORANDUM

Bartle, J.

December 6, 2016

Before the court is the motion of the Government for reconsideration of the court's October 27, 2016 order granting a new trial to defendant Jose Sanchez.

Our Court of Appeals set forth the standard for deciding motions for reconsideration in Max's Seafood Cafe v. Quinteros, 176 F.3d 669 (3d Cir. 1999), which has been applied in criminal cases. See United States v. Croce, 355 F. Supp. 2d 774, 775 n.1 (E.D. Pa. 2005). There, our Court of Appeals explained:

a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.

See Max's Seafood Cafe, 176 F.3d at 677. It appears that the Government claims that the court committed a clear error of law

in granting a new trial to the defendant. The Government's motion is without merit.

Prior to the trial of the defendant for serious drug offenses, the Pennsylvania Supreme Court had suspended defendant's counsel, Michael Elias Stosic, from the practice of law, and the Chief Judge of this Court Petrese B. Tucker had issued an order to show cause why identical discipline would be unwarranted. Nonetheless, Stosic continued to represent the defendant at the trial without advising the defendant or the undersigned of his suspension or of Chief Judge Tucker's order. After the undersigned learned of the situation and held a post-trial hearing, the court, over the Government's opposition, granted a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure, which provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires."

The Government seeks an evidentiary hearing to determine whether Stosic provided ineffective assistance of counsel under the Sixth Amendment to the United States Constitution. It argues that Rule 33 allows for a new trial only where trial errors affected the jury's judgment. While this may be the usual reason for granting a new trial, the Rule, in our view, should not be read so narrowly. It states that a new trial may be granted "in the interest of justice." It is

designed to provide the court with the ability to remedy a variety of unjust situations, all of which cannot be defined in advance. See, e.g., United States v. Quiles, 618 F.3d 383, 391 (3d Cir. 2010) (citing United States v. Taglia, 922 F.2d 413, 415-16 (7th Cir. 1991)). The Rule demands a fact-specific inquiry, and the court necessarily must have broad discretion to do what the interest of justice requires whenever an injustice occurs, no matter in what guise the injustice may arise. In numerous contexts, the United States Supreme Court has applied the principle that "justice must satisfy the appearance of justice." See Offutt v. United States, 348 U.S. 11, 14 (1954).

The Government faults the court for failing to inquire of the defendant at the hearing whether he was advised by his counsel that he had been suspended from the Bar of the Commonwealth by the Supreme Court of Pennsylvania. The court had no need to do so because Stosic admitted in open court in answer to the court's question that he had not told his client of his suspension.

The relevant facts concerning Stosic's misconduct are undisputed, and no second hearing is necessary to deal with any other issue. The Government simply fails to recognize the broad salutary purpose of Rule 33. The Government is incorrect in trying to limit the Rule to apply here only if defendant's counsel was ineffective. Allowing the guilty verdict to stand

in this case, whether or not defense counsel was ineffective under the Sixth Amendment, would undermine the integrity and fairness of the trial and the federal judicial system. What occurred in this case, while unusual, cries out for a new trial in the interest of justice. The court's ruling stands.

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ORDER

AND NOW, this 6th day of December, 2016, for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that the motion of the Government for reconsideration (Doc. # 69) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.